

HOUSE APPROPRIATIONS AND FINANCE COMMITTEE SUBSTITUTE FOR
HOUSE TAXATION AND REVENUE COMMITTEE SUBSTITUTE FOR
SENATE FINANCE COMMITTEE SUBSTITUTE FOR
SENATE BILL 907

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46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

AN ACT

RELATING TO THE PUBLIC PEACE, HEALTH, SAFETY AND WELFARE;
AMENDING AND REPEALING SECTIONS OF THE NMSA 1978 TO CLARIFY
INVESTMENT GUIDELINES PURSUANT TO THE UNIFORM PRUDENT INVESTOR
ACT; DECLARING AN EMERGENCY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 6-8-7 NMSA 1978 (being Laws 1957,
Chapter 179, Section 7, as amended) is amended to read:

"6-8-7. POWERS AND DUTIES OF STATE INVESTMENT OFFICER--
INVESTMENT POLICY--INVESTMENT MANAGERS.--

A. Subject to the limitations, conditions and
restrictions contained in policy-making regulations or
resolutions adopted by the council and subject to prior
authorization by the council, the state investment officer may
make purchases, sales, exchanges, investments and reinvestments

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1 of the assets of all funds administered under the supervision
2 of the council. The state investment officer shall see that
3 money invested is at all times handled in the best interests of
4 the state.

5 B. Securities or investments purchased or held may
6 be sold or exchanged for other securities and investments;
7 provided, however, that no sale or exchange shall be at a price
8 less than the going market at the time the securities or
9 investments are sold or exchanged.

10 C. ~~[In purchasing bonds, the state investment~~
11 ~~officer shall require a certified or original written opinion~~
12 ~~of a reputable bond attorney or the attorney general of the~~
13 ~~state certifying the legality of the bonds to be purchased;~~
14 ~~provided, however, this written opinion may be the approving~~
15 ~~legal opinion ordinarily furnished with the bond issue.] Assets~~
16 of the land grant permanent funds and other funds managed by
17 the state investment officer may be combined for investment as
18 common pooled funds to effectuate efficient management.

19 D. The state investment officer shall formulate and
20 recommend to the council for approval investment regulations or
21 resolutions pertaining to the kind or nature of investments and
22 limitations, conditions and restrictions upon the methods,
23 practices or procedures for investment, reinvestment, purchase,
24 sale or exchange transactions that should govern the activities
25 of the investment office.

1 E. The council shall meet at least once each month,
 2 and as often as exigencies may demand, to consult with the
 3 state investment officer concerning the work of the investment
 4 office. The council shall have access to all files and records
 5 of the investment office and shall require the state investment
 6 officer to report on and provide information necessary to the
 7 performance of council functions. The council may hire one or
 8 more investment management firms to advise the council with
 9 respect to the council's overall investment plan for the
 10 investment of all funds managed by the investment office and
 11 pay reasonable compensation for such advisory services from the
 12 assets of the applicable funds, subject to budgeting and
 13 appropriation by the legislature. The terms of any such
 14 investment management services contract shall incorporate the
 15 statutory requirements for investment of funds under the
 16 council's jurisdiction.

17 F. For the purposes of the investment of all funds
 18 managed by the investment office, the state investment officer
 19 shall manage the funds in accordance with the prudent investor
 20 rule set forth in the Uniform Prudent Investor Act. With the
 21 approval of the council, the state investment officer may
 22 employ investment management services to invest the funds and
 23 may pay reasonable compensation for investment management
 24 services from the assets of the applicable funds, subject to
 25 budgeting and appropriation by the legislature.

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1 G. For funds available for investment for more than
2 one year, the state investment officer may contract with any
3 state agency to provide investment advisory or investment
4 management services, separately or through a pooled investment
5 fund, provided the state agency enters into a joint powers
6 agreement with the council and that state agency pays at least
7 the direct cost of such services. Notwithstanding any
8 statutory provision governing state agency investments, the
9 state investment officer may invest funds available from a
10 state agency pursuant to a joint powers agreement in any type
11 of investment permitted for the land grant permanent funds
12 under the prudent investor rule. In performing investment
13 services for a state agency, the council and the state
14 investment officer are exempt from the New Mexico Securities
15 Act of 1986. As used in this subsection, "state agency" means
16 any branch, agency, department, board, instrumentality,
17 institution or political subdivision of the state, the New
18 Mexico finance authority and any tax-exempt private endowment
19 entity whose sole beneficiary is a state agency. "

20 Section 2. Section 6-8-9 NMSA 1978 (being Laws 1957,
21 Chapter 179, Section 9, as amended) is amended to read:

22 "6-8-9. SECURITIES AND INVESTMENT. --

23 A. Money made available from the land grant
24 permanent funds [~~for investment for a period in excess of one~~
25 ~~year~~] may be invested in the following classes of securities

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1 and investments:

2 (1) bonds, notes or other obligations of the
3 United States government, its agencies, government-sponsored
4 enterprises, corporations or instrumentalities and that portion
5 of bonds, notes or other obligations guaranteed as to principal
6 and interest and issued by the United States government, its
7 agencies, government-sponsored enterprises, corporations or
8 instrumentalities or issued pursuant to acts or programs
9 authorized by the United States government;

10 (2) bonds, notes, debentures and other
11 obligations issued by the state of New Mexico or a municipality
12 or other political subdivision of the state that are secured by
13 an investment grade bond rating from a national rating service,
14 pledged revenue or other collateral or insurance necessary to
15 satisfy the standard of prudence set forth in [~~Section 6-8-10~~
16 ~~NMSA 1978~~] Subsection D of this section;

17 (3) bonds, notes, debentures, instruments,
18 conditional sales agreements, securities or other evidences of
19 indebtedness of any corporation, partnership or trust organized
20 and operating within the United States rated not less than Baa
21 or BBB or the equivalent by a national rating service;

22 (4) bonds, notes, debentures, instruments,
23 conditional sales agreements, securities or other evidences of
24 indebtedness rated not less than BB or B or the national
25 association of insurance commissioners' equivalent by a

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1 national rating service. An investment made under this
2 paragraph shall be in publicly traded debt issues with an
3 outstanding par value of at least one hundred million dollars
4 (\$100,000,000) and issued by a corporation, partnership or
5 trust listed on a national exchange and organized and operating
6 within the United States; provided that investments made
7 pursuant to this paragraph shall not exceed three percent of
8 the market value of the land grant permanent funds, calculated
9 at the time of investment;

10 (5) notes or obligations securing loans or
11 participation in loans to business concerns or other
12 organizations that are obligated to use the loan proceeds
13 within New Mexico, to the extent that loans are secured by
14 first mortgages on real estate located in New Mexico and are
15 further secured by an assignment of rentals, the payment of
16 which is fully guaranteed by the United States in an amount
17 sufficient to pay all principal and interest on the mortgage;

18 (6) common and preferred stocks and
19 convertible issues of any corporation; provided that it has
20 securities listed on one or more national stock exchanges or
21 included in a nationally recognized list of stocks; and
22 provided further that the fund shall not own more than five
23 percent of the voting stock of any company;

24 (7) real estate investments, including real
25 property and undivided interests in real property, debt

1 instruments secured by first liens on real property or limited
2 partnership interests; provided that the total value of
3 investments made under this paragraph shall not exceed three
4 percent of the market value of the land grant permanent funds,
5 calculated at the time of investment;

6 (8) securities of non-United States
7 governmental, quasi-governmental, partnership, trust or
8 corporate entities, and these may be denominated in foreign
9 currencies; provided:

10 (a) aggregate non-United States
11 investments shall not exceed fifteen percent of the book value
12 of the land grant permanent funds;

13 (b) for non-United States stocks and
14 non-United States bonds and notes, issues permitted for
15 purchase shall be limited to those issues traded on a national
16 stock exchange or included in a nationally recognized list of
17 stocks or bonds;

18 (c) currency contracts may be used for
19 investing in non-United States securities only for the purpose
20 of hedging foreign currency risk and not for speculation;

21 (d) the investment management services
22 of a trust company or national bank exercising trust powers or
23 of an investment counseling firm may be employed; and

24 (e) reasonable compensation for
25 investment management services and other administrative and

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1 investment expenses related to these investments shall be paid
2 directly from the assets of the funds, subject to budgeting and
3 appropriation by the legislature; [~~and~~]

4 (9) stocks or shares of a diversified
5 investment company registered under the federal Investment
6 Company Act of 1940, as amended, and listed securities of long-
7 term unit investment trusts or individual, common or collective
8 trust funds of banks or trust companies that invest primarily
9 in equity securities authorized in Paragraphs (6) and (8) of
10 this subsection; provided that the investment company has total
11 assets under management of at least one hundred million dollars
12 (\$100,000,000); and provided further that the council may allow
13 reasonable administrative and investment expenses to be paid
14 directly from the assets derived from these investments,
15 subject to budgeting and appropriation by the legislature; and

16 (10) other types of investments, investment
17 instruments and investment strategies proposed by the state
18 investment officer and authorized by the council; provided
19 that:

20 (a) no investment shall be made pursuant
21 to this paragraph until the type of investment, investment
22 instrument or investment strategy has been reviewed by the
23 legislative finance committee;

24 (b) each calendar quarter, the state
25 investment officer shall report to the legislative finance

1 committee on specific investments made pursuant to this
2 paragraph during the previous three months, the performance of
3 those investments and the overall performance of all previous
4 investments made pursuant to this paragraph; and

5 (c) not more than five percent of the
6 book value of the land grant permanent funds shall be invested
7 at any given time pursuant to the provisions of this paragraph.

8 B. Not more than sixty-five percent of the book
9 value of the land grant permanent funds shall be invested at
10 any given time in securities described in Paragraphs (6), (8)
11 and (9) of Subsection A of this section, and no more than ten
12 percent of the book value of the land grant permanent funds
13 shall be invested at any given time in securities described in
14 Paragraph (3) of Subsection A of this section that are rated
15 Baa or BBB. Assets of the land grant permanent funds may be
16 combined for investment in common pooled funds to effectuate
17 efficient management.

18 C. Commissions paid for the purchase and sale of
19 any security shall not exceed brokerage rates prescribed and
20 approved by national stock exchanges or by industry practice.

21 D. Money made available from the land grant
22 permanent fund for investment pursuant to this section shall be
23 invested pursuant to the Uniform Prudent Investor Act."

24 Section 3. Section 7-27-5.1 NMSA 1978 (being Laws 1983,
25 Chapter 306, Section 8, as amended) is amended to read:

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1 "7-27-5.1. MARKET RATE INVESTMENTS. --

2 A. Money made available from the severance tax
3 permanent fund for investment for a period in excess of one
4 year in market rate investments may be invested in the
5 following classes of securities and investments:

6 (1) bonds, notes or other obligations of the
7 United States government, its agencies, government-sponsored
8 enterprises, corporations or instrumentalities and that portion
9 of bonds, notes or other obligations guaranteed as to principal
10 and interest and issued by the United States government, its
11 agencies, government-sponsored enterprises, corporations or
12 instrumentalities or issued pursuant to acts or programs
13 authorized by the United States government;

14 (2) bonds, notes, debentures and other
15 obligations issued by the state of New Mexico or a municipality
16 or other political subdivision of the state that are secured by
17 an investment grade bond rating from a national rating service,
18 pledged revenue or other collateral or insurance necessary to
19 satisfy the standard of prudence set forth in [~~Section 6-8-10~~
20 ~~NMSA 1978~~] Subsection D of this section;

21 (3) bonds, notes, debentures, instruments,
22 conditional sales agreements, securities or other evidences of
23 indebtedness of any corporation, partnership or trust organized
24 and operating within the United States rated not less than Baa
25 or BBB or the equivalent by a national rating service;

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1 (4) bonds, notes, debentures, instruments,
 2 conditional sales agreements, securities or other evidences of
 3 indebtedness rated not less than BB or B or the national
 4 association of insurance commissioners' equivalent by a
 5 national rating service. An investment made under this
 6 paragraph shall be in publicly traded debt issues with an
 7 outstanding par value of at least one hundred million dollars
 8 (\$100,000,000) and issued by a corporation, partnership or
 9 trust listed on a national exchange and organized and operating
 10 within the United States; provided that investments made
 11 pursuant to this paragraph shall not exceed three percent of
 12 the market value of the severance tax permanent fund,
 13 calculated at the time of investment;

14 (5) notes or obligations securing loans or
 15 participation in loans to business concerns or other
 16 organizations that are obligated to use the loan proceeds
 17 within New Mexico, to the extent that loans are secured by
 18 first mortgages on real estate located in New Mexico and are
 19 further secured by an assignment of rentals, the payment of
 20 which is fully guaranteed by the United States in an amount
 21 sufficient to pay all principal and interest on the mortgage;

22 (6) common and preferred stocks and
 23 convertible issues of any corporation; provided that it has
 24 securities listed on one or more national stock exchanges or
 25 included in a nationally recognized list of stocks; and

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1 provided further that the fund shall not own more than five
2 percent of the voting stock of any company;

3 (7) real estate investments, including real
4 property and undivided interests in real property, debt
5 instruments secured by first liens on real property, or limited
6 partnership interests; provided that the total value of
7 investments made under this paragraph shall not exceed three
8 percent of the market value of the severance tax permanent
9 fund, calculated at the time of investment;

10 (8) securities of non-United States
11 governmental, quasi-governmental, partnership, trust or
12 corporate entities, and these may be denominated in foreign
13 currencies; provided:

14 (a) aggregate non-United States
15 investments shall not exceed fifteen percent of the book value
16 of the severance tax permanent fund;

17 (b) for non-United States stocks and
18 non-United States bonds and notes, issues permitted for
19 purchase shall be limited to those issues traded on a national
20 stock exchange or included in a nationally recognized list of
21 stocks or bonds;

22 (c) currency contracts may be used for
23 investing in non-United States securities only for the purpose
24 of hedging foreign currency risk and not for speculation;

25 (d) the investment management services

1 of a trust company or national bank exercising trust powers or
2 of an investment counseling firm may be employed; and

3 (e) reasonable compensation for
4 investment management services and other administrative and
5 investment expenses related to these investments shall be paid
6 directly from the assets of the fund, subject to budgeting and
7 appropriation by the legislature;

8 (9) stocks or shares of a diversified
9 investment company registered under the federal Investment
10 Company Act of 1940, as amended, and listed securities of long-
11 term unit investment trusts or individual, common or collective
12 trust funds of banks or trust companies that invest primarily
13 in equity securities authorized in Paragraphs (6) and (8) of
14 this subsection; provided that the investment company has total
15 assets under management of at least one hundred million dollars
16 (\$100,000,000); and provided further that the council may allow
17 reasonable administrative and investment expenses to be paid
18 directly from the assets derived from these investments,
19 subject to budgeting and appropriation by the legislature;

20 [~~and~~]

21 (10) participation interests in New Mexico
22 real-property-related business loans. The actual amount
23 invested under this paragraph shall not exceed ten percent of
24 the severance tax permanent fund and shall be included in any
25 minimum amount of severance tax permanent fund investments

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1 required to be placed in New Mexico certificates of deposit.
2 Investments authorized in this paragraph are subject to the
3 following:

4 (a) the state investment officer may
5 purchase from eligible institutions a participation interest of
6 up to eighty percent in any loan secured by a first mortgage or
7 a deed of trust on the real property located in New Mexico of
8 an eligible business entity, or its subsidiary, that is
9 operating or shall use loan proceeds to commence operations
10 within New Mexico plus any other guarantees or collateral that
11 may be judged by the eligible institution or the state
12 investment officer to be prudent. To be eligible for
13 investment the following minimum requirements shall be met: 1)
14 the loan proceeds shall be used exclusively for the purpose of
15 expanding or establishing businesses in New Mexico, including
16 the refinancing of such businesses for expansion purposes only.
17 If a portion of the loan proceeds were used for refinancing or
18 repaying an existing loan and payment of principal and interest
19 to the state has not been made within ninety days from the due
20 date, unless extended pursuant to agreement between the
21 originating institution and the state investment officer, the
22 originating institution shall buy back the state's
23 participation interest in the loan and begin foreclosure
24 proceedings; 2) eligible business entities shall not include
25 public utilities or financial institutions or shopping centers,

1 apartment buildings or other such passive investments; 3) the
 2 minimum loan amount shall be two hundred fifty thousand dollars
 3 (\$250,000) and may be met by packaging up to ten separate loans
 4 satisfying the requirements of this paragraph. The maximum
 5 loan amount shall be two million dollars (\$2,000,000); 4) the
 6 loan maturity shall be not less than five years or more than
 7 thirty years; 5) the maximum loan-to-value ratio shall be
 8 seventy-five percent and based on current appraisal of the real
 9 property by an appraiser who is licensed or certified in New
 10 Mexico and approved by the state investment officer, which
 11 shall be made not more than one hundred eighty days from the
 12 loan origination date; 6) the interest rate of the loan shall
 13 be fixed for five years and shall be adjusted at every fifth
 14 anniversary of the note to the rate specified in Item 7) of
 15 this subparagraph; 7) the yield on the state's participation
 16 interest shall in no case be less than the greater of the then-
 17 prevailing yield on United States treasury securities of five-
 18 year maturity plus two and one-half percent or the yield
 19 received by the lending institution calculated exclusive of
 20 servicing fees; 8) if payment of principal or interest has not
 21 been made within one hundred eighty days from the due date,
 22 unless extended pursuant to agreement between the originating
 23 institution and the state investment officer, the originating
 24 institution shall buy back the state's participation interest
 25 in the loan, substitute another qualifying loan or begin

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1 foreclosure proceedings; and 9) if foreclosure proceedings are
2 commenced, the state and the originating institution shall
3 share in proportion to their participation interest, as
4 provided in this subparagraph, in the legal and other
5 foreclosure expenses and in any loss incurred as a result of a
6 foreclosure sale;

7 (b) a standardized participation
8 agreement, the form of which shall be approved by the attorney
9 general's office, shall be executed between the investment
10 office and each eligible originating institution. The
11 participation agreement shall provide that the originating
12 institution shall not assign its interest in any loan covered
13 by the agreement without the prior written consent of the state
14 investment officer;

15 (c) a formal forward commitment program
16 may be instituted by the state investment officer with the
17 approval of the council;

18 (d) the council shall adopt regulations:
19 1) defining passive investments; 2) establishing underwriting
20 guidelines; 3) ensuring diversification across a variety of
21 types of collateral, types of businesses and regions of the
22 state; and 4) providing for the review by the state investment
23 officer of servicing and other fees that may be charged by the
24 eligible institution;

25 (e) eligible institutions include banks,

1 savings and loan associations and credit unions operating in
2 the state; and

3 (f) real property is defined as land and
4 attached buildings, but excludes all interests that may be
5 secured by a security interest under Article 9 of the Uniform
6 Commercial Code, and mineral resource values; and

7 (11) other types of investments, investment
8 instruments and investment strategies proposed by the state
9 investment officer and authorized by the council; provided
10 that:

11 (a) no investment shall be made pursuant
12 to this paragraph until the type of investment, investment
13 instrument or investment strategy has been reviewed by the
14 legislative finance committee;

15 (b) each calendar quarter, the state
16 investment officer shall report to the legislative finance
17 committee on specific investments made pursuant to this
18 paragraph during the previous three months, the performance of
19 those investments and the overall performance of all previous
20 investments made pursuant to this paragraph; and

21 (c) not more than five percent of the
22 book value of the severance tax permanent fund shall be
23 invested at any given time pursuant to the provisions of this
24 paragraph.

25 B. Not more than sixty-five percent of the book

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1 value of the severance tax permanent fund shall be invested at
2 any given time in securities described in Paragraphs (6),
3 (8) and (9) of Subsection A of this section, and no more than
4 ten percent of the book value of the severance tax permanent
5 fund shall be invested at any given time in securities
6 described in Paragraph (3) of Subsection A of this section that
7 are rated Baa or BBB. Assets of the severance tax permanent
8 fund may be combined for investment in common pooled funds to
9 effectuate efficient management.

10 C. Commissions paid for the purchase and sale of
11 any security shall not exceed brokerage rates prescribed and
12 approved by national stock exchanges or by industry practice.

13 D. Money made available from the severance tax
14 permanent fund for investment pursuant to this section shall be
15 invested pursuant to the Uniform Prudent Investor Act."

16 Section 4. REPEAL. --Section 6-8-10 NMSA 1978 (being Laws
17 1957, Chapter 179, Section 10, as amended) is repealed.

18 Section 5. EMERGENCY.--It is necessary for the public
19 peace, health and safety that this act take effect immediately.